

JOSHUA G. HAMILTON (SB# 199610)
joshuahamilton@paulhastings.com
NICHOLAS J. BEGAKIS (SB# 253588)
nickbegakis@paulhastings.com
PAUL HASTINGS LLP
515 South Flower Street
Twenty-Fifth Floor
Los Angeles, CA 90071-2228
Telephone: (213) 683-6000
Facsimile: (213) 627-0705

Attorneys for Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CONNIE M. DAVIS-GREY, an
individual

Plaintiff,

vs.

DRIVETIME CAR SALES
COMPANY, LLC; an Arizona Limited
Liability Company; DT
ACCEPTANCE CORPORATION, an
Arizona Corporation; FIDELITY AND
DEPOSIT COMPANY OF
MARYLAND, a Maryland corporation;
and DOES 1 through 75, inclusive,

Defendants.

CASE NO.

CV14-3227 DMG-MAN
(County of Los Angeles Superior Court
Case No. BC540094)

**NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. §§ 1332,
1441 AND 1446**

COPY

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 CENTRAL DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HER
3 ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE that Defendants DriveTime Car Sales
5 Company, LLC and DT Acceptance Corporation (collectively, "DriveTime") and
6 Fidelity Deposit and Insurance Company of Maryland ("Fidelity"), remove this
7 action from the Superior Court of the State of California for the County of Los
8 Angeles, where it is now pending as Case No. BC540094, to the United States
9 District Court for the Central District of California, pursuant to 28 U.S.C. §§
10 1332(a)(1) and 1441(a). The facts that entitle defendants to so remove are as
11 follows:

12 1. On or about March 20, 201, plaintiff Connie M. Davis-Grey
13 ("Plaintiff") filed a Complaint in the Superior Court of California for the County of
14 Los Angeles entitled: *Connie M. Davis Grey v. Drivetime Car Sales Company,*
15 *LLC, et al.*, Case No. BC540094 ("Complaint"). The Complaint, which is attached
16 to the declaration of Nicholas J. Begakis filed concurrently herewith as Exhibit
17 "A," alleges purported causes of action for (1) breach of contract; (2) violations of
18 the California Consumer Legal Remedies Act; (3) violations of California's Unfair
19 Competition Law, Business & Professions Code § 17200 *et seq.*; and (4) violations
20 of California Vehicle Code § 11711.

21 2. DriveTime first received notice that the Complaint might be
22 filed via correspondence dated March 19, 2014 from Plaintiff's counsel attaching
23 an unstamped copy of the Complaint and noting that it "would be filed."
24 DriveTime was subsequently served with the Complaint on March 28, 2014. The
25 Complaint was the first pleading, notice, order or other paper from which it could
26 be ascertained that this action is removable. Accordingly, this Notice of Removal is
27 timely under 28 U.S.C. § 1446(b) because it is being filed within thirty (30) days
28

1 after the receipt by DriveTime of the initial pleading and it is within one year after
2 commencement of the action.

3 **REMOVAL IS PROPER UNDER**
4 **28 U.S.C. § 1331(a)(1)**

5 3. This is a civil action within the original jurisdiction of this
6 Court, and may be removed pursuant to 28 U.S.C. § 1441 and the procedures set
7 forth in 28 U.S.C. § 1446, based on diversity jurisdiction under
8 28 U.S.C. § 1332(a)(1) (“Section 1332(a)(1)”).

9 4. Section 1332(a)(1) provides that the district courts “shall have
10 original jurisdiction of all civil actions where the matter in controversy exceeds the
11 sum or value of \$75,000, exclusive of interests and costs, and is between – (1)
12 citizens of different states.”

13 A. **The Amount in Controversy Exceed \$75,000 Exclusive of Interest**
14 **and Costs**

15 5. Plaintiff filed a Statement of Damages on March 20, 2014
16 (“Statement of Damages”) setting forth claimed damages in excess of \$75,000.00.
17 Begakis Decl. Ex. B. The Statement of Damages specifically claims that “Plaintiff
18 reserves the right to seek \$100,000.00 in actual damages, and \$300,000.00 in
19 punitive damages.” Begakis Decl. Ex. B. Plaintiff further reserved the right to seek
20 additional damages beyond those amounts. *Id.* Accordingly, Plaintiff seeks
21 damages in excess of the minimum amount in controversy requirement.
22 28 U.S.C. § 1331(a)(1).

23 B. **Plaintiff and Defendants are Diverse**

24 6. Plaintiff is a citizen of California. Section 1332(a)(1) requires
25 that an action must be “between citizens of different states. Plaintiff is a citizen of
26 California because she is domiciled in California.¹ Plaintiff alleges that at all

27 ¹ For purposes of diversity jurisdiction, an individual is a citizen of the state in
28 which he or she is domiciled. *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986). A
person is domiciled where she has established a fixed residence and intends to stay

1 relevant times she was a resident of the State of California and the County of Los
 2 Angeles.² (See Begakis Decl. Ex. A, Compl. ¶ 1.) Plaintiff signed the installment
 3 sales contract at issue on June 29, 2011 and stated her address in the installment
 4 contract in Inglewood, CA 90301. (See Begakis Decl. Ex. A, Compl., ¶ 1.) (See
 5 *id.*) In short, Plaintiff has admitted in the Complaint that she is a resident of
 6 Inglewood, California, at all relevant times. Accordingly, Plaintiff is domiciled in
 7 California and is therefore a citizen of California for purposes of Section
 8 1331(a)(2).

9 7. DriveTime Car Sales Company, LLC is a resident of Arizona.
 10 DriveTime Car Sales Company, LLC is an Arizona limited liability company with
 11 its principal place of business in Arizona. (Declaration of Jon Ehlinger (Ehlinger
 12 Decl.) ¶ 3.) Its sole member is DriveTime Sales and Finance Company, LLC, an
 13 Arizona limited liability company with its principal place of business in Arizona.
 14 (*Id.*) The sole member of DriveTime Sales and Finance Company, LLC is
 15 DriveTime Automotive Group, Inc., an Arizona Corporation with its principal place
 16 of business in Arizona. (*Id.*) See *D.B. Zwirn Special Opportunities Fund, L.P. v.*
 17 *Mehrotra*, 661 F.3d 124, 125-26 (1st Cir. 2011) (A limited liability company is a
 18 citizen of each jurisdiction in which its members are citizens). Accordingly,
 19 DriveTime Car Sales Company is a resident of Arizona.

20 8. DT Acceptance Corporation is an Arizona corporation with its
 21 principal place of business in Arizona. (Ehlinger Decl., ¶ 2); see also 28 U.S.C. §
 22 1332(c)(1) (“[a] corporation shall be deemed to be a citizen of any State by which it
 23 has been incorporated and of the State where it has its principal place of business”);
 24 *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 902 (9th Cir. 2006)
 25 there. *Id.* at 749-50. The intent to be domiciled is determined through a number of
 26 objective factors including residence, driver’s license, vehicle registration, location
 27 of personal and real property, and any other indicia of intent stay in the State. *Id.* at
 28 750.

² An individual’s residence is prima facie evidence of citizenship. See *State Farm
 Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994).

1 (LLC's have the citizenship of their owners). Accordingly, DT Acceptance
2 Corporation is a citizen of Arizona.

3 9. Fidelity and Deposit Company of Maryland is a Maryland
4 corporation with its principal place of business in Illinois. (Declaration of Kathy
5 Alves, ¶ 2 *see also* 28 U.S.C. § 1332(c)(1) (“[a] corporation shall be deemed to be
6 a citizen of any State by which it has been incorporated and of the State where it
7 has its principal place of business”).³

8 WHEREFORE, DriveTime prays that the above action now pending
9 against it in the Superior Court of the State of California, County of Los Angeles,
10 be removed to this Court.

11 DATED: April 28, 2014

JOSHUA G. HAMILTON
NICHOLAS J. BEGAKIS
PAUL HASTINGS LLP

12
13
14 By: 

Nicholas J. Begakis

15 Attorneys for Defendants
16 DriveTime Car Sales Company, LLC and
17 DT Acceptance Corporation
18
19
20
21
22
23
24

25 ³ DriveTime is informed and believes that DOES 1 through 10 are defendants sued
26 under fictitious names and have not as yet been served. There is no allegation that
27 any such fictitious defendant is a resident of California. *See Soliman v. Phillip*
28 *Morris, Inc.*, 311 F.3d 966, 971 (9th Cir. 2002) (citizenship of Doe defendants
“becomes relevant only if and when plaintiff seeks leave to substitute a named
defendant.”)

EXHIBIT “A”

COPY

1 ROSNER, BARRY & BABBITT, LLP
 2 Hallen D. Rosner, SBN: 109740
 3 Dana R. Turner, SBN: 280039
 4 10085 Carroll Canyon Road, Suite 100
 5 San Diego, CA 92131
 6 TEL: (858) 348-1005
 7 FAX: (858) 348-1150
 8 hal@rbblawgroup.com
 9 dana@rbblawgroup.com

10 Attorneys for Plaintiff

CONFORMED COPY
 ORIGINAL FILED
 Superior Court Of California
 County Of Los Angeles

MAR 20 2014

Sherri R. Carter, Executive Officer/Clerk
 By: Judi Lara, Deputy

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12
 13 IN AND FOR THE COUNTY OF LOS ANGELES
 14
 15 STANLEY MOSK COURTHOUSE

16 CONNIE M. DAVIS-GREY, an
 17 individual;

18 Plaintiff,

19 v.

20 DRIVETIME CAR SALES COMPANY,
 21 LLC; an Arizona Limited Liability
 22 Company;
 23 DT ACCEPTANCE CORPORATION, an
 24 Arizona Corporation;
 25 FIDELITY AND DEPOSIT COMPANY
 26 OF MARYLAND, a Maryland
 27 Corporation; and DOES 1 through 75,
 28 inclusive,

Defendants.

CASE NO. BC540094
 COMPLAINT

1. ACTION ON A WRITTEN CONTRACT
2. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT - EQUITABLE AND INJUNCTIVE RELIEF ONLY
3. VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200
4. VIOLATION OF VEHICLE CODE §11711

PARTIES AND VENUE

1. Plaintiff is an individual who resided in the City of Inglewood, County of Los Angeles, State of California at the time the contract that is the subject of this lawsuit was entered into.

///

WVH X P 5046

1 2. Defendant Drivetime Car Sales Company, LLC ("Drivetime" or "the
2 dealership") is or was a car dealership, registered to do business in the State of
3 California, and doing business in the City of Torrance, County of Los Angeles.

4 3. Defendant DT Acceptance Corporation, ("DT Acceptance") is and was at
5 all material times an Arizona Corporation, doing business through Drivetime in the
6 City of Torrance, County of Los Angeles, State of California. DT Acceptance, as the
7 "Holder," accepted assignment of the Retail Installment Sale Contract ("RISC") for the
8 purchase of the 2003 Dodge Neon, VIN: 1B3ES26C03D243416, ("the vehicle") by
9 Plaintiff. All claims and defenses that Plaintiff can maintain against the dealership can
10 also be maintained against DT Acceptance.

11 4. Defendant Fidelity and Deposit Company of Maryland ("Fidelity") is a
12 Maryland Corporation, that issued the bond to Drivetime under Vehicle Code §17110
13 (Bond #08973514, effective January 8, 2010) and is therefore liable for the acts of
14 Drivetime, and Does 1 through 75 for the illegal conduct stated in this Complaint.

15 5. Plaintiff does not know the true names and capacities, whether corporate,
16 partnership, associate, individual or otherwise, of Defendants sued herein as
17 Does 1 through 75, inclusive, and thus names them under the provisions of §474 of the
18 California Code of Civil Procedure. Defendants Does 1 through 75, inclusive, are in
19 some manner responsible for the acts, occurrences and transactions set forth herein,
20 and are legally liable to Plaintiff and/or they are the alter-ego of the Defendants named
21 herein. Plaintiff will set forth the true names and capacities of the fictitiously named
22 Defendants together with appropriate charging allegations when ascertained.

23 6. All acts of the dealership's employees as hereinafter alleged were
24 authorized or ratified by the owner or managing agents of Drivetime.

25 7. Each Defendant, whether actually or fictitiously named herein, was the
26 principal, agent (actual or ostensible), co-conspirator, or employee of each other
27 Defendant and in acting as such principal or within the course and scope of such
28 employment, agency, or conspiracy, took some part in the acts and omissions

1 hereinafter set forth by reason of which each Defendant is liable to Plaintiff for the
2 relief prayed for herein.

3 8. Plaintiff signed a RISC for the purchase of the vehicle that is the subject
4 of this litigation. A true and correct copy of the RISC is attached hereto as Exhibit 1.

5 9. The RISC for the vehicle includes the following language:

6 NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS
7 SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR
8 COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES
9 OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS
10 HEREOF, RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT
11 EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

12 10. This Notice makes DT Acceptance liable, contractually and under State
13 law, for all claims and defenses that could be raised against Drivetime, with respect to
14 the purchase/sale of the vehicle. DT Acceptance, therefore, is liable for the acts of
15 Drivetime, as stated herein.

16 11. The significance of the Holder Clause is that it completely eliminates the
17 protection traditionally afforded to a Holder in Due Course by subjecting a Holder to the
18 same claims and defenses that a Buyer can assert against a Seller or a Seller's assignee.

19 12. The inclusion of the Holder Clause in a RISC, such as the contract at issue
20 in this case, places Holder (DT Acceptance) on notice that, if it agrees to accept
21 assignment of that contract, it necessarily also agrees to waive the protections
22 traditionally afforded to a Holder in Due Course and to be subject to the same claims
23 and defenses that the Buyer could assert against the Seller or the Seller's assignee.

24 13. As a result, when a Holder accepts assignment of a RISC bearing the
25 Holder Clause for the purchase and sale of a vehicle in California, it also implicitly
26 agrees to assume greater responsibility to the Buyer than statutorily required by the
27 Automobile Sales Finance Act ("ASFA"). In essence, the Holder agrees to stand in the
28 shoes of the Seller and assumes the risk of Seller misconduct. Where, as here, a
dealer/seller has violated California law, the Holder, DT Acceptance, (having
relinquished its statutory right to limited enforcement of the contract by contractually

1 assuming the status of the dealership), cannot enforce the RISC against Plaintiff,
2 regardless of the lack of knowledge, and should Plaintiff elect to rescind the RISC, bears
3 the dealership's responsibility for refunding all monies paid by Plaintiff pursuant to the
4 contract, including monies paid directly to the dealership prior to the assignment.

5 14. DT Acceptance is, therefore, liable for all of the dealership's misconduct
6 as laid forth below, with the right of rescission and damages, as established by the
7 evidence.

8 SUMMARY OF ALLEGATIONS

9 15. On June 29, 2011, Plaintiff went to Drivetime to shop for a vehicle. When
10 Plaintiff viewed the 2003 Dodge Neon, VIN: 1B3ES26C03D243416, the advertised price
11 displayed on the vehicle was \$7,998. Plaintiff decided to purchase the vehicle, but when
12 she reviewed the RISC in the finance office, she noticed the cash price on Line 1(A) of
13 her RISC was \$10,998. Plaintiff asked a Drivetime representative about the price
14 discrepancy, who then informed Plaintiff she was charged \$3,000 for a service contract.
15 Plaintiff informed the representative her niece worked for State Farm, and she
16 preferred to purchase a warranty through her relative. Drivetime's representative
17 informed Plaintiff the charge was mandatory, and if she wanted to purchase the vehicle,
18 she was required to purchase the \$3,000 service contract as well.

19 16. Failing to sell a vehicle to a person at the advertised price (price displayed
20 on the vehicle's window), exclusive of taxes, vehicle registration fees, the California tire
21 fee, amount charged for a service contract, etc., violates Vehicle Code §11713.1(e).
22 Furthermore, adding any fees/costs to Line 1(A)(1) of the RISC is a violation of the
23 Automobile Sales Finance Act ("ASFA"). Line 1(A)(1) is for disclosure of the "cash price"
24 of the vehicle only. The amount stated on Line 1(A)(1) of the RISC should be \$7,998.

25 17. Further, service contracts are optional products that are required to be
26 disclosed on Line 1(F) RISCs.

27 18. Additionally, the vehicle was used when sold to Plaintiff requiring
28 disclosure of any applicable License Fees on Line 2(A) of the RISC and disclosure of

1 Registration/Transfer/Titling Fees on Line 2(B). When selling a used vehicle, there
2 must be an amount disclosed on Line 2(B). Drivetime failed to disclose the
3 Registration/Transfer/Titling Fees on Line 2B of Plaintiff's RISC making it impossible
4 to determine the actual amount owed for License Fees on Line 2(A).

5 19. A vehicle purchaser is entitled to a refund for any overpayment of License
6 Fees paid. By lumping together the License Fees and Registration/Transfer/Titling Fees
7 all onto Line 2(A) of the RISC, Plaintiff does not know the true amount of the License
8 Fees, and, therefore, doesn't know if she is entitled to a refund of any overcharge.
9 Without proper disclosure of these fees, she doesn't know if she is entitled or how much
10 of a refund she is entitled to.

11 20. A dealership is required to correctly state and itemize the License Fees due
12 on Line 2A and the Registration/Transfer/Titling Fees due on Line 2(B). In a used
13 vehicle purchase, there is always at least a charge of \$15 due for transferring title to the
14 vehicle. This amount must be disclosed on Line 2(B). Plaintiff's RISC states "0.00" on
15 Line 2B.

16 21. Subsequent to purchase, Plaintiff discovered the vehicle was once
17 registered as a prior rental. California law prohibits a dealer from making a statement
18 as part of a plan or scheme with th intent not to sell any vehicle as advertised, Cal.
19 Vehicle Code §11614(a). The scheme begins with Drivetime failing to disclose the
20 vehicle's rental status on advertisement for the vehicle. Under California law, dealers
21 have a duty to disclose a vehicle's prior rental status clearly and conspicuously in all
22 advertisements. See 13 Cal. Code of Regulations §260.2. Drivetime advertised the
23 vehicle on its website, and on information and belief, Drivetime willfully or recklessly
24 failed to fulfill its duty to disclose the vehicle's prior rental history on the
25 advertisement, a clear violation of 13 Cal. Code of Regulations §260.2.

26 22. Drivetime did not disclose the vehicle's prior rental status on its Buyer's
27 Guide, and at no point during the transaction did a Drivetime representative inform
28 Plaintiff of the vehicle's rental car status. There is no distinction between a material

1 fact and a misrepresentation as to such a fact. Drivetime knows it is legally required
2 to disclose this information, yet it purposefully conceals this information from its
3 customers.

4 23. Plaintiff was not in the market to purchase a prior rental vehicle, and
5 would not have purchased this one had it been disclosed. Upon further review, the
6 inventory displayed on Drivetime's website includes many prior rental vehicles. None
7 of these prior rental vehicles' advertisements contain any information about their prior
8 rental status. Many consumers have undeniably fallen victim to Drivetime's deceptive
9 advertisements.

10 FIRST CAUSE OF ACTION

11 Action on a Written Contract – as to all Defendants except

12 Fidelity and Deposit Company of Maryland

13 24. Plaintiff incorporates by reference each and every allegation set forth in
14 Paragraphs 1 through 23, inclusive, of this Complaint.

15 25. The RISC executed by Plaintiff for the purchase of the vehicle is a
16 "conditional sale contract" pursuant to Civil Code Section 2981(a).

17 26. Drivetime is a "seller" pursuant to Civil Code Section 2981(b).

18 27. CPS is the Holder of the RISC and is liable to Plaintiff for Drivetime's
19 violations of the Automobile Sales Finance Act ("ASFA").

20 28. Plaintiff is a "buyer" pursuant to Civil Code Section 2981(c).

21 29. The vehicle purchased by Plaintiff is a "motor vehicle" pursuant to Civil
22 Code Section 2981(k).

23 30. Drivetime advertised the vehicle for \$7,998, but sold the vehicle for a cash
24 price of \$10,998, \$3,000 more than its advertised price.

25 31. When Plaintiff inquired about the price discrepancy, Drivetime informed
26 her the \$3,000 charge was for a mandatory service contract. Service contracts are not
27 only optional, but any charges for such are required to be displayed on Line 1(F).

28 ///

1 32. Furthermore, adding any fees/costs to Line 1(A)(1) of the RISC is also a
2 violation of Civil Code §2982. Line 1(A)(1) is for disclosure of the "cash price" of the
3 vehicle only. The amount stated on Line 1(A)(1) of the RISC should be \$7,998.

4 33. Additionally, the RISC fails to properly disclose the Registration, Transfer,
5 and Titling Fees due in violation of Civil Code Sections 2982(a)(2)(A) and (B).

6 34. A dealership is required to correctly state and itemize the License Fees due
7 on Line 2(A) and the Registration/Transfer/Titling Fees due on Line 2(B). In a used
8 vehicle purchase, there is always at least a charge of \$15 due for transferring title to the
9 vehicle. This amount must be disclosed on Line 2(B). Plaintiff's RISC states "0.00" on
10 Line 2B.

11 35. A vehicle purchaser is entitled to a refund for any overpayment of License
12 Fees paid. By lumping together the License Fees and Registration/Transfer/Titling Fees
13 all onto Line 2(A) of the RISC, Plaintiff does not know the true amount of the License
14 Fees, and, therefore, doesn't know if she is entitled to a refund of any overcharge.
15 Without proper disclosure of these fees, she doesn't know if she is entitled or how much
16 of a refund she is entitled to.

17 36. Plaintiff has been damaged by Drivetime's violations of the ASFA. Based
18 on these violations, Plaintiff is entitled to return of all monies paid under the Contract,
19 pursuant to Civil Code §2983, and have the right to elect rescission and cancel the
20 Contract under Civil Code §2983.1. As to the "holder," Plaintiff reserves the right to be
21 excused from payment of all finance charges, both past and future, as an alternative
22 remedy to those set forth herein.

23 37. Plaintiff also seeks attorneys' fees and costs pursuant to Civil Code Section
24 2983.4.

25 ///

26 ///

27 ///

28 ///

SECOND CAUSE OF ACTION

Violation of the Consumers Legal Remedies Act, Civil Code §1750, *et seq.* -

Equitable and Injunctive Relief, Only - as to all Defendants except

Fidelity and Deposit Company of Maryland

38. Plaintiff incorporates by reference each and every allegation set forth in Paragraphs 1 through 37, inclusive, of this Complaint.

39. The vehicle constitutes "goods" bought for use primarily for personal, family or household purposes pursuant to Civil Code Section 1761(a).

40. Drivetime is a "person" pursuant to California Civil Code Section 1761(c).

41. Plaintiff is a "consumer" pursuant to California Civil Code Section 1761(d).

42. The advertisement and sale of the vehicle to Plaintiff are "transactions" pursuant to California Civil Code Section 1761(e).

43. Under the Consumers Legal Remedies Act ("CLRA"), the following acts are prohibited: (2) Misrepresenting the source, sponsorship, approval, or certification of goods or services; (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have; (7) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another; (9) Advertising goods or services with intent not to sell them as advertised; (14) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; and (16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

44. Drivetime violated the CLRA by: (1) Grossly inflating the cash price for the vehicle; (2) Forcing a consumer to purchase an optional product; (3) Selling the vehicle over advertised price; (4) Adding a finance charge or other fee to Line 1(A)(1) of the RISC; (5) Overcharging License Fees on Line 2(A) of the RISC; (6) Failing to properly

1 itemize the amounts due on Lines 2(A) and 2(B) of the RISC; (7) Falsely stating no
2 charge applied to Line 2(B); (8) Selling the vehicle as part of a scheme of not selling
3 vehicles as advertised; and (9) Failing to disclose the vehicle's prior rental history.

4 45. DT Acceptance violated the CLRA by: (1) Accepting assignment of a RISC
5 that is illegal on its face; and (2) Accepting assignment of illegal RISCs from Drivetime
6 and potentially other dealerships.

7 46. Plaintiff, concurrent with the filing of this Complaint, mailed to
8 Defendants, via certified and regular mail, a copy of the lawsuit, which seeks equitable
9 and injunctive relief, only, and serves as notice to Defendants of Drivetime's and DT
10 Acceptance's violations of the CLRA. No monetary damages are sought under the CLRA
11 at this time. Equitable and injunctive relief only are sought under the CLRA at this
12 time.

13 47. The CLRA provides that a complaint for violations of that statutory act
14 may be amended without leave of court should the violations not be remedied within
15 thirty (30) days of the filing of the lawsuit. Plaintiff will amend this Complaint to add
16 a claim for damages under the CLRA for violations of California Civil Code
17 §§1770(a),(2),(5),(7),(9),(14), and (16), should the violations complained of herein not be
18 remedied within the requisite time frame. In addition to actual, statutory, general,
19 incidental, and consequential damages, Plaintiff will seek punitive damages from
20 Drivetime and DT Acceptance for its malicious, oppressive and fraudulent acts against
21 Plaintiff.

22 48. Civil Code §1780(a)(2) of the CLRA provides that a consumer is entitled
23 to an injunction prohibiting acts or practices which violate the CLRA. Plaintiff seeks
24 an order enjoining Drivetime, and DT Acceptance from engaging in the acts, methods,
25 and practices set forth in Paragraphs 44, and 45, of this Complaint.

26 ///

27 ///

28 ///

THIRD CAUSE OF ACTION

Violation of Business & Professions Code §17200, *et seq.* – as to all

Defendants except Fidelity and Deposit Company of Maryland

49. Plaintiff incorporates by reference each and every allegation set forth in Paragraphs 1 through 48, inclusive, of this Complaint.

50. Drivetime committed acts of unfair competition, as defined by Business and Professions Code Section 17200, *et seq.* As set forth more fully above, Drivetime has engaged in a course of conduct of systematically violating the consumer laws in this State prohibiting the commitment of deceptive practices, including the laws of fraud and deceit, and the various prohibitions contained in the Consumers Legal Remedies Act and Automobile Sales Finance Act as set forth in detail above.

51. Drivetime has engaged in an “unlawful” business act and/or practice by: (1) Grossly inflating the cash price for the vehicle; (2) Forcing a consumer to purchase an optional product; (3) Selling the vehicle over advertised price; (4) Adding a finance charge or other fee to Line 1(A)(1) of the RISC; (5) Overcharging License Fees on Line 2(A) of the RISC; (6) Failing to properly itemize the amounts due on Lines 2(A) and 2(B) of the RISC; (7) Falsely stating no charge applied to Line 2(B); (8) Selling the vehicle as part of a scheme of not selling vehicles as advertised; and (9) Failing to disclose the vehicle’s prior rental history.

52. DT Acceptance has engaged in an “unlawful” business act and/or practice by: (1) Accepting assignment of a RISC that is illegal on its face; and (2) Accepting assignment of illegal RISCs from Drivetime and other dealerships.

53. As detailed above, these business acts and practices violated numerous provisions of both state and federal law, including, but not limited to the CLRA and the ASFA.

54. The harm to Plaintiff outweighs the utility of Drivetime and DT Acceptance’s policies and practices particularly considering the available alternatives, and that Drivetime and DT Acceptance’s policies and practices are immoral,

1 unscrupulous, unethical and against public policy. Drivetime and DT Acceptance's
2 policies and practices consequently constitute an "unfair" business act or practice within
3 the meaning of Business and Professions Code Section 17200.

4 55. Drivetime and DT Acceptance's deceptive policies and practices as set forth
5 above also are likely to and/or have deceived Plaintiff. Thus, Drivetime and DT
6 Acceptance have also engaged in "fraudulent" business practices.

7 56. Drivetime and DT Acceptance have engaged in, and continues to engage
8 in, the same form of deceptive acts and practices.

9 57. Drivetime and DT Acceptance's unlawful, unfair and fraudulent business
10 practices present a continuing threat to Plaintiff and others in that Drivetime and DT
11 Acceptance will continue utilizing similar policies and practices.

12 58. Business and Professions Code Section 17203 provides that Plaintiff is
13 entitled to an order enjoining Drivetime and DT Acceptance from engaging in acts or
14 practices that violate Business and Professions Code Section 17200, as well as providing
15 for equitable monetary relief so as to preclude the retention of all ill-gotten monies by
16 Drivetime and DT Acceptance or so as to restore any monies wrongfully obtained by
17 Drivetime and DT Acceptance to Plaintiff. Plaintiff has lost money and suffered injury
18 in fact as a result of Drivetime and DT Acceptance's illegal conduct. Plaintiff seeks such
19 equitable monetary relief, and an order enjoining Drivetime and DT Acceptance from
20 engaging in the acts and practices set forth in this Complaint, imposing an asset freeze
21 or constructive trust over such monies as the Court deems appropriate, as well as
22 compelling a corrective informational campaign to correct the misperceptions in the
23 marketplace created by such conduct.

24 59. Plaintiff further seeks attorneys' fees and costs.

25 ///

26 ///

27 ///

28 ///

1 FOURTH CAUSE OF ACTION

2 Violation of Vehicle Code §11711, et seq. – as to all Defendant

3 Fidelity and Deposit Company of Maryland, only

4 60. Plaintiff incorporates by reference each and every allegation set forth in
5 paragraphs 1 through 59 inclusive, of this complaint.

6 61. As a condition of obtaining a license from the California DMV to sell
7 vehicles, Drivetime was required by Vehicle Code §11710 to obtain, and did obtain, a
8 surety bond in the amount of \$50,000 from Fidelity.

9 62. Fidelity issued Bond #08973514, effective January 8, 2010, to Drivetime,
10 to fulfill its obligations under Vehicle Code §11710. The bond issued to Drivetime was
11 in effect on the date of the incidents alleged in this Complaint.

12 63. Pursuant to Vehicle Code §11710(a), the bond was issued to Drivetime and
13 made payable to “a purchaser” in the case of “fraud” by Drivetime.

14 64. Plaintiff is a purchaser within the meaning of Vehicle Code §11710(a).
15 Fraud, as that term is used in Vehicle Code §11710(a), is the same fraud as commonly
16 defined in the law, including fraud as defined in Civil Code §§1571, 1572, 1573 and
17 Vehicle Code §11710(a). *See Beverly Finance Co. v. American Casualty Co. of Reading*
18 (1969) 273 Cal.App.2d 259.

19 65. As set forth herein, Defendant Drivetime has committed fraud within the
20 meaning of Civil Code §§1571, 1572, 1573 and Vehicle Code §11710(a).

21 66. Vehicle Code §11711(a) provides a consumer with a cause of action against
22 the bond if a dealership committed fraud. Plaintiff alleges that Drivetime committed
23 fraud in the sale of the vehicle to her by: (1) Grossly inflating the cash price for the
24 vehicle; (2) Forcing a consumer to purchase an optional product; (3) Selling the vehicle
25 over advertised price; (4) Adding a finance charge or other fee to Line 1(A)(1) of the
26 RISC; (5) Overcharging License Fees on Line 2(A) of the RISC; (6) Failing to properly
27 itemize the amounts due on Lines 2(A) and 2(B) of the RISC; (7) Falsely stating no

28 ///

1 charge applied to Line 2(B); (8) Selling the vehicle as part of a scheme of not selling
2 vehicles as advertised; and (9) Failing to disclose the vehicle's prior rental history.

3 67. Fidelity is liable under the bond to Plaintiff, based on the fraud of
4 Drivetime, in the amount of the purchase price of the vehicle, or such other sum as is
5 established at the time of trial, according to proof.

6 Accordingly, Plaintiff prays for judgment as follows and as permitted as to each
7 cause of action:

- 8 1. For general damages according to proof at trial, excluding the
9 Consumers Legal Remedies Act at this time;
- 10 2. For rescission of the purchase contract;
- 11 3. For incidental and consequential damages according to proof at
12 trial, excluding the Consumers Legal Remedies Act at this time;
- 13 4. For the equitable and injunctive relief permitted under Civil Code
14 §1780 and Business & Professions Code §17200;
- 15 5. For pre-judgment interest at the legal rate;
- 16 6. For reasonable attorneys' fees and costs of suit as permitted by law
17 (including, but not limited to, Civil Code §§1780(d), 1794, 2983.4,
18 and the bond company claims);
- 19 7. For such other and further relief as the Court deems just and
20 proper under the circumstances; and
- 21 8. No request for damages of any type are sought under the
22 Consumers Legal Remedies Act at this time.

23
24 DATED: March K, 2014

ROSNER, BARRY & BABBITT, LLP

25
26 By:



Hellen D. Rosner
Attorney for Plaintiff

EXHIBIT 1

SIMPLE INTEREST RETAIL INSTALLMENT CONTRACT

REPRINT DATE: 6/29/2011

SALES DATE: 6/29/2011

Buyer (and Co-Buyer) Name and Address

CONNIE MARIA DAVIS-GREY

807 WALNUT ST 3
INGLEWOOD, CA 90301-3399

424-227-6293

323-293-6284

Dealer/Creditor Name and Address

DRIVETIME CARSALES COMPANY LLC
18313 HAWTHORNE BLVD.
TORRANCE, CA 90504-4510
310-793-1666

115006444301

You, the Buyer (and Co-Buyer or Co-Signer, if any), may buy the motor vehicle described below (the "Vehicle") for cash or on credit. The cash price is shown below as "Cash Price". By signing below, you represent that you have been quoted only one cash price for the Vehicle. The credit price is shown below as "Total Sale Price". By signing this Contract, you choose to buy the Vehicle on credit as described in this Contract. "We", "us" and "our" refer to the Dealer shown above, and, after assignment of this Contract, to DT Acceptance Corporation.

New/Used	Model Year and Make	Model	Vehicle Identification Number	Primary Use For Which Purchased
USED	2003 DODGE	NEON	1B3ES26C03D243416	<input checked="" type="checkbox"/> Personal <input type="checkbox"/> Agricultural <input type="checkbox"/> Business

Trade-In:

Year

Make

Model

FEDERAL TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate	FINANCE CHARGE The dollar amount the credit will cost you	Amount Financed The amount of credit provided to you or on your behalf	Total of Payments The amount you will have paid when you have made all scheduled payments	Total Sale Price The total cost of your purchase on credit, including your down payment of
22.840 %	\$ 6,241.39	\$ 11,681.34	\$ 17,922.73	\$ 500.00 \$ 18,422.73

Payment Schedule

Number of Payments	Amount of Each Payment	When Payments Are Due
95	\$ 186.70	Semi-Monthly Beginning 07/18/2011
1 Final Payment	\$ 186.23	07/03/2015

Prepayment: If you pay off your debt early, you will not have to pay a penalty.

Late Payment: You must pay a late charge on the part of each payment not made within 10 days after the date the payment is due. The charge is five percent (5%) of the late amount.

Security Interest: You are giving a security interest in the Vehicle being purchased.

Please read this Contract for additional information on security interests, non-payment, default, and our right to require repayment of your debt in full before the scheduled maturity date.

Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.

THERE IS NO COOLING OFF PERIOD UNLESS YOU OBTAIN A CONTRACT CANCELLATION OPTION

California law does not provide for a "cooling off" or other cancellation period for vehicle sales. Therefore, you cannot later cancel this Contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this Contract with the agreement of the seller or for legal cause, such as fraud.

However, California law does require a seller to offer a 2 day contract cancellation option on used vehicles with a purchase price of less than \$40,000, subject to certain statutory conditions. This contract cancellation option requirement does not apply to the sale of a recreational vehicle, a motorcycle or an off-highway motor vehicle subject to identification under California law. See the vehicle contract cancellation option agreement for details.

YOU ACKNOWLEDGE THAT YOU HAVE READ ALL PAGES OF THIS CONTRACT. YOU ALSO ACKNOWLEDGE RECEIPT OF A TRUE AND COMPLETELY FILLED IN COPY OF ALL PAGES OF THE CONTRACT AT THE TIME YOU SIGN IT.

CUSTOMER COPY

(Signed English original on file with DriveTime.)

FINANCIALIZATION OF THE AMOUNT FINANCED		
1. Total Cash Price		
A. Cash Price of Motor Vehicle and Accessories		\$ 10,998.00 (A)
(1) Cash Price Vehicle	\$ 10,998.00	
(2) Cash Price Accessories	\$ N/A	
B. Document Preparation Fee (not a government fee)		\$.00 (B)
C. Smog Fee Paid to Seller		\$ 29.75 (C)
D. Sales Tax (on A + B + C)		\$ 1,130.34 (D)
E. Optional DMV Electronic Filing Fee*		\$ N/A (E)
F. Service contract (optional)*		\$ N/A (F)
G. Prior Credit or Lease Balance paid by Seller to _____ (see downpayment and trade-in calculation)	N/A	\$ N/A (G)
H. Other (to whom paid)* _____ For Optional Debt Cancellation Agreement* _____		\$ N/A (H)
I. Other (to whom paid)* _____ For _____		\$ N/A (I)
J. Used Vehicle Contract Cancellation Option Agreement (optional)*		\$.00 (J)
Total Cash Price (A through J)		\$ 12,158.09 (1)
2. Amounts Paid to Public Officials		
A. License Fees		\$ 15.00 (A)
B. Registration/Transfer/Titling Fees		\$.00 (B)
C. California Tire Fees*		\$ N/A (C)
D. Other _____	N/A	\$ N/A (D)
Total Official Fees (A through D)		\$ 15.00 (2)
3. Amount Paid to Insurance Companies (Total Premiums)		\$ N/A (3)
4. Smog for Certification, Noncompliance, Exemption, or Waiver Fee Paid to State		\$ 8.25 (4)
5. Subtotal (1 through 4)		\$ 12,181.34 (5)
6. Total Down Payment		
A. Gross Trade-In Allowance Yr _____ Make _____ Model _____ Odom _____ VIN _____		\$.00 (A)
B. Less Prior Credit or Lease Balance		\$.00 (B)
C. Net Trade-In (A Less B) (indicate if a negative number)		\$.00 (C)
D. Deferred Downpayment		\$ N/A (D)
E. Manufacturer's Rebate		\$ N/A (E)
F. Other _____	N/A	\$ N/A (F)
G. Cash		\$ 500.00 (G)
Total Downpayment (C through G)		\$ 500.00 (6)
(if negative, enter zero for Total Downpayment and enter the amount less than zero as a positive number in 1G above)		
7. Amount Financed (5 less 6)		\$ 11,681.34 (7)

*Seller may receive or retain part of these amounts.

You agree to pay a finance charge on the Amount Financed at the Annual Percentage Rate shown on page 1. This rate is referred to in this Contract as the Contract Rate. The Federal Truth in Lending Disclosures on page 1 are also terms of this Contract.

THE MINIMUM PUBLIC LIABILITY INSURANCE LIMITS PROVIDED IN LAW MUST BE MET BY EVERY PERSON WHO PURCHASES A VEHICLE. IF YOU ARE UNSURE WHETHER OR NOT YOUR CURRENT INSURANCE POLICY WILL COVER YOUR NEWLY ACQUIRED VEHICLE IN THE EVENT OF AN ACCIDENT, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

WARNING:

YOUR PRESENT POLICY MAY NOT COVER COLLISION DAMAGE OR MAY NOT PROVIDE FOR FULL REPLACEMENT COSTS FOR THE VEHICLE BEING PURCHASED. IF YOU DO NOT HAVE FULL COVERAGE, SUPPLEMENTAL COVERAGE FOR COLLISION DAMAGE MAY BE AVAILABLE TO YOU THROUGH YOUR INSURANCE AGENT OR THROUGH THE SELLING DEALER. HOWEVER, UNLESS OTHERWISE SPECIFIED, THE COVERAGE YOU OBTAIN THROUGH THE DEALER PROTECTS ONLY THE DEALER, USUALLY UP TO THE AMOUNT OF THE UNPAID BALANCE REMAINING AFTER THE VEHICLE HAS BEEN REPOSSESSED AND SOLD.

FOR ADVICE ON FULL COVERAGE THAT WILL PROTECT YOU IN THE EVENT OF LOSS OR DAMAGE TO YOUR VEHICLE, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

THE BUYER SHALL SIGN TO ACKNOWLEDGE THAT HE/SHE UNDERSTANDS THESE PUBLIC LIABILITY TERMS AND CONDITIONS.

If you have a complaint concerning this sale, you should try to resolve it with the seller. Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or any investigator for the Department of Motor Vehicles, or any combination thereof. After this Contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

OPTIONAL DEBT CANCELLATION AGREEMENT

Optional Debt Cancellation Agreement. An Optional Debt Cancellation Agreement is not required to obtain credit, and will not be provided unless you agree and pay the cost as shown in item 1.H. on page 2 of this Contract. This Agreement is our promise to waive the deficiency amount, if any, between the Contract balance and the insurance proceeds from your physical damage insurance coverage in the event of a total loss of the vehicle, as defined in the Agreement. You may still be liable for past due payments, late charges, and the deductible under your insurance coverage. The Agreement provides the details of the coverage, including the administrator of this coverage. You want the Optional Debt Cancellation Agreement.

Term: _____ Mos. _____

NOTICES REQUIRED BY FEDERAL LAW

Used motor vehicle Buyers Guide. If you are buying a used vehicle with this Contract, federal regulations may require a special Buyers Guide to be displayed on the window of the Vehicle. **THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.**

NOTICE - ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

UNLESS A CHARGE IS INCLUDED IN THIS AGREEMENT FOR PUBLIC LIABILITY OR PROPERTY DAMAGE INSURANCE, PAYMENT FOR SUCH COVERAGE IS NOT PROVIDED BY THIS AGREEMENT.

Payments: You jointly and severally agree to make all payments when they are due according to the Payment Schedule shown in the Federal Truth in Lending Disclosure Box on the first page of this Contract. You may prepay this Contract at any time without penalty. Interest will accrue on any amounts remaining unpaid after maturity at the Annual Percentage Rate disclosed in the Federal Truth in Lending Disclosure Box on the first page of this Contract.

Security Interest: To secure your obligations, you give us a security interest in the Vehicle, all accessions, attachments, accessories and equipment placed in or on the Vehicle and all proceeds of the Vehicle. You also give us a security interest in all money or goods received for the Vehicle and all insurance premiums, service and other contracts we finance. The security interest secures payment of all amounts you owe in this Contract and performance of your other agreements in this Contract. You will not grant anyone else a security interest, lien or any other claim to the Vehicle without our express prior written consent. We reserve our right of setoff (we can apply funds we owe you to what you owe us under the Contract) to the extent not prohibited by applicable law.

Finance Charges: This is a simple interest Contract. The Finance Charges you pay will depend on how you make your payments. Your actual Finance Charges may be more than the disclosed Finance Charges if you make your payments late or in less than the scheduled amount. We will apply payments to late charges, Finance Charges and to the unpaid balance of the cash price and other charges in any manner we choose unless we are required by law to apply payments in a particular order. Finance Charges are earned by applying the Contract Rate to the unpaid Balance of Cash Price and Other Charges for the time such balance is owed. The Dealer may receive a portion of the Finance Charges.

Use of Vehicle: You must take care of the Vehicle. You must obey all laws in using it. You must keep the Vehicle in your possession at the Buyer's address shown above, unless we approve another address in writing. You may not sell or rent the Vehicle. You must keep it free from the claims of others. You will not take it out of the United States without our prior written consent. You will immediately tell us of any change in your address or the address where the Vehicle is regularly kept. You agree not to add to the Vehicle any accessories, equipment or any other property in which any other person has an ownership or security interest.

Warranties Seller Disclaims: Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this Contract, the Seller makes no warranties, express or implied, on the Vehicle, and there will be no implied warranties of merchantability or fitness for a particular purpose. This provision does not affect any warranties covering the vehicle or parts thereof that the Vehicle manufacturer or parts supplier may provide. Only the manufacturer or supplier shall be liable for performance under their warranties. If the Seller has sold you a certified used vehicle, the warranty of merchantability is not disclaimed.

Vehicle Insurance: You must insure yourself and us for the term of this Contract against loss of or damage to the Vehicle with a policy in the Buyer's name acceptable to us. **You may obtain insurance on the vehicle from a person of your choice that is authorized to sell such insurance and is acceptable to us.** You will maintain comprehensive fire, theft and collision coverage, insuring the Vehicle for at least the Vehicle's fair market value. You will name us as loss payee and provide whatever evidence of insurance we request. We must approve the type and amount of insurance. If you do not maintain the required insurance you will be in default. We may buy substantially similar coverage at your expense. We will add the cost of such insurance to your obligations due under this Contract and/or collect those costs separately from you. You agree to pay such costs either upon our demand or in installments, subject to a finance charge at the Contract Rate, if we elect to apply a finance charge. The insurance we buy may, at our option, protect only our interest, or both your interest and ours. Insurance we buy may cost substantially more than insurance you buy. We will cancel the insurance we buy if you give us satisfactory proof of insurance. Whether or not the Vehicle is insured, you will pay us all you owe under this Contract.

CUSTOMER COPY

(Signed English original on file with DriveTime.)

even if the Vehicle is lost, damaged beyond repair, or destroyed.

You are not required as a condition of financing the purchase of the Vehicle to purchase or negotiate any insurance through a particular insurance company, agent or broker. Your choice of insurance providers will not affect our decision to sell you the Vehicle or extend credit to you.

Late Charges and Returned Checks: The charge for late payments is shown in the Federal Truth in Lending Disclosure Box on the first page of this Contract. You must also pay any cost we pay to collect any late payment, as allowed by law. When we accept a late payment or late charge, that does not excuse your default or mean that you can keep making payments late. You agree to pay the charge of \$15 for any check, draft or negotiated order of withdrawal you give us that is returned for any reason.

Default: You will be in default if you do not make any payment in full when such payment is due. You will be in default if you gave false or misleading information on your application relating to this Contract. You will be in default if you file a bankruptcy petition or if one is filed against you. You will be in default if the Vehicle is lost, damaged beyond repair, or destroyed. You will be in default if you do not keep any other agreement in this Contract.

If you are in default, we may require you to pay at once the unpaid Balance of Cash Price and Other Charges, the earned and unpaid part of the Finance Charge and all other amounts due under this Contract (the entire unpaid balance). If as a consequence of your default we require that you pay the entire unpaid balance, we will charge you interest at the Contract Rate or, if the Contract Rate is zero, at the highest rate authorized by applicable law on the entire unpaid balance from the date of our notice to you demanding payment of the entire unpaid balance. Additionally, we may take back (repossess) the Vehicle. We may also take items of personal property found in the Vehicle when we take back the Vehicle and hold them for you. If you do not claim them within the time required by law, we will dispose of them in a commercially reasonable manner. We may cancel any insurance or other products or services you have purchased in this Contract and apply any refunds we receive to the amount you owe. You agree to pay any attorneys' fees and collection costs we incur at any time in collecting amounts you owe under this Contract, including during any bankruptcy proceedings or upon any appeal.

If we take back the Vehicle, we will sell it unless you exercise any right to cure or redeem the Vehicle that you may have under state law. The sale proceeds, less amounts we pay to take back the Vehicle, hold it, prepare it for sale, and sell it, and less our attorneys' fees and legal costs if permitted by law, will be used to pay the amount you owe on this Contract. Any money left will be paid to you unless the law requires that we pay it to someone else. If the sale proceeds are not enough to pay off this Contract and costs, you will pay what is still owed (the deficiency) to us. If we repossess the Vehicle, you may be required to pay our actual costs of taking and storing the Vehicle, to the extent such charges are not prohibited by law.

We can, without notice, delay enforcing our rights or exercise only part of them without losing them, waive a right we have without waiving it for subsequent opportunities to exercise that right, and waive a right we have as to one Buyer without waiving it as to the other(s). You also expressly waive presentment, notice of dishonor, protest and notice of protest.

Assignment: You may not assign your rights in the Vehicle or under this Contract without our permission. We may sell or assign our rights in this Contract without your permission. We may sell or assign this Contract for an amount that is more than or less than the Balance of Cash Price and Other Charges.

General: Any change in this Contract must be written and signed by you and us. The law of the state of the Dealer's place of business shown in this Contract applies to this Contract. If that law does not allow all the agreements in this Contract, the ones that are not allowed will be void. The rest of this Contract will still be good. You promise you have given a true payoff amount on any vehicle traded in. If that payoff is more than the amount shown in 6.B in the Itemization of the Amount Financed on the second page of this Contract, you must pay us the excess upon demand. We are not liable for any failure or delay in delivering the vehicle to you if it is beyond our control, not our fault or we are not negligent.

Waiver of California Vehicle Code Section 1808.21: You waive the provisions of California Vehicle Code Section 1808.21 and authorize the California Department of Motor Vehicles to furnish your residence address to us.

After-Sale Review and Verification Process: The Vehicle is sold to you subject to an after-sale review and verification of the information you have provided to us. You have agreed to cooperate with the after-sale review and verification process. If we cannot verify the information you have provided to us, or any information you provided to us is false, there is a material adverse change in such information during the review process, or you do not cooperate in the verification and review process, you will be in default under the terms of the Contract.

Trade-In Representation and Warranty: You represent and warrant that your trade-in vehicle described in the Buyers Order/Purchase order, if any, is not a titled salvage, flood, taxi, police or rebuilt vehicle; the odometer has not been replaced, repaired, changed or rolled back; all emission control equipment is on the trade-in and is working; you will provide to us the Certificate of Title (or documents that allow us to obtain it), and, you have the right to sell the trade-in.

Odometer (mileage): Each your and our representations regarding odometer readings are subject to information provided by others, including government agencies. We each understand that this information is not always accurate. As permitted by

CUSTOMER COPY

(Signed English original on file with DriveTime.)

applicable law, neither of us is responsible for any inaccuracies in this information to the extent it is not the party's fault.

Disclosure on Airbags: We disclaim any knowledge of, and make no representation or warranty as to the condition or operability of the airbag(s) on the Vehicle unless otherwise disclosed to you on the AutoCheck Vehicle History Report. You acknowledge that we have not made any representations, oral or in writing, as to the condition or operability of the airbag(s), and you accept the Vehicle without representation or warranty from us. You further acknowledge that you had the opportunity to have the airbag(s) checked by someone of your choice prior to the completion of the sale.

References/Credit Reports: We may contact your employer or your references to verify the information you provided to us in your application or in connection with this Contract. We may also contact your employer or your references if we are unable to locate you. The servicer of this Contract may also do so. Federal or state law may limit these contacts. You also consent to us or a servicer, obtaining a credit report(s) in connection with the servicing of the Contract.

Liability Insurance Required: You understand that state law requires you to purchase and maintain liability insurance. We do not provide liability insurance for you and it is not included in your Contract.

Record Retention: You agree that we may maintain documents and records related to the Vehicle and the Contract electronically, including, but not limited to, documents and record images, and that we may dispose of original documents. You agree that a copy of any such electronic records may be used and shall be deemed to be the same as an original in any arbitration, judicial or non-judicial or regulatory proceeding relating to the Vehicle.

Communications With You: You agree that we may contact you in writing, by e-mail, or using prerecorded/ artificial voice messages, text messages, chat, instant messages, and automatic dialing systems, to the extent not prohibited by law. You also agree that we may contact you at any address or telephone number you provide us, even if the telephone number is a mobile phone number and you are charged for it by your mobile phone service provider. The content of electronic communications may include legal notices required by law, other notices, contract documents, confirmation of payments, and DriveTime information and marketing materials. If state or federal law requires us to give you notice or information that does not contain confidential private information (for example, notices describing our privacy policy) you agree where permitted by law, we may post it on the DriveTime web site and you have received the information or notice that has been posted. You understand this means you need to check our web site www.drivetime.com occasionally to confirm if anything has been posted. With respect to email communication, although unlikely, emails are not protected and may be intercepted. We will assist one another if any problems arise. If you do not want us to contact you by email, simply notify us by calling the following toll-free number 800-967-8526 or visit <http://www.drivetime.com/optout/default.aspx>. Note that we may monitor or record for customer satisfaction and quality purposes our dealings with you, including telephone conversations. You agree that we, any affiliate, successor, or assign servicing this Contract on our behalf, may do so.

60 Day Contract Rate Buy Down: If you are current on your payments or bring the Contract current, you have not given us any insufficient funds checks, and you are not in default of this Contract, you have the option of making an additional payment on or before sixty (60) days after your execution of this Contract. A portion of this payment will be applied to any accrued and unpaid finance charges at the time of the payment and the remainder will be applied to reduce your principal balance. Depending upon the amount of the additional payment, the Contract rate under your Contract also will be reduced. The additional payment is not in lieu of any other payment shown in your payment schedule including irregular payments. This additional payment is completely optional; you are not required to make this payment. The following chart shows how much you can reduce your Contract rate depending upon the amount of this additional payment. At the time of the additional payment, we can change the amount of your regular payments and/or your term. We will discuss your options with you at that time.

With an additional payment of \$	250.00	you will receive a Contract rate of	22.091
With an additional payment of \$	500.00	you will receive a Contract rate of	21.304
With an additional payment of \$	750.00	you will receive a Contract rate of	20.476
With an additional payment of \$	1,000.00	you will receive a Contract rate of	19.604
With an additional payment of \$	1,250.00	you will receive a Contract rate of	18.683
With an additional payment of \$	1,500.00	you will receive a Contract rate of	17.710
With an additional payment of \$	1,750.00	you will receive a Contract rate of	16.678
With an additional payment of \$	2,000.00	you will receive a Contract rate of	15.584

Assignment of Dealer: For value received, Dealer hereby transfers and assigns to DT ACCEPTANCE CORPORATION ("Assignee") all of its right, title, and interest in this Contract and the Vehicle. This transfer and assignment is made pursuant to and is subject to any Agreement between Dealer and Assignee by which Assignee has agreed to accept the transfer and assignment of contracts from Dealer.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge _____ Dolly M. Gee _____ and to
Magistrate Judge _____ Margaret A. Nagle _____.

The case number on all documents filed with the Court should read as follows:

14-CV-03227 DMG-MANx

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the assigned Magistrate Judge has been designated to hear discovery-related motions. All discovery-related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

April 28, 2014

Date

By SBOURGEOIS
Deputy Clerk

ATTENTION

A copy of this Notice must be served on all parties served with the Summons and Complaint (or, in cases removed from state court, on all parties served with the Notice of Removal) by the party who filed the Complaint (or Notice of Removal).

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETI. (a) PLAINTIFFS (Check box if you are representing yourself ☐)

Connie M. Davis-Grey

DEFENDANTS (Check box if you are representing yourself ☐)

DriveTime Car Sales Company, LLC, DT Acceptance Corporation, and Fidelity and Deposit Company of Maryland

(b) County of Residence of First Listed Plaintiff Los Angeles

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Maricopa Cty. AZ

(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

Halen D. Rosner (SB# 109740)
Dan R. Turner (SB# 280039)
Rosner, Barry & Babbitt, LLP
10085 Carroll Canyon Road, Suite 100
San Diego, CA 92131
(858) 348-1005

Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

Joshua G. Hamilton (SB# 199610)
Nicholas J. Begakis (SB#253588)
Paul Hastings LLP
515 S. Flower St., 25th Floor
Los Angeles, CA 90071

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☐ 2. U.S. Government Defendant
- ☐ 3. Federal Question (U.S. Government Not a Party)
- ☒ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant)

- | | | | | | |
|---|---|--------------------------------|---|--------------------------------|---------------------------------------|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☐ 1. Original Proceeding
- ☒ 2. Removed from State Court
- ☐ 3. Remanded from Appellate Court
- ☐ 4. Reinstated or Reopened
- ☐ 5. Transferred from Another District (Specify)
- ☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check "Yes" only if demanded in complaint.)CLASS ACTION under F.R.Cv.P. 23: ☐ Yes ☒ No☒ MONEY DEMANDED IN COMPLAINT: \$ 100,000.00VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Diversity pursuant to 28 USC 1332, 1441, & 1446

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input checked="" type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

CV14-3227
COPY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input checked="" type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF? Then check the box below for the county in which the majority of DEFENDANTS reside.	A DEFENDANT? Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
	<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western

Question C: Location of plaintiffs, defendants, and claims? (Make only one selection per row)	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	C.2. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Western Division

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETIX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT):

Nicholas J. Begakis

DATE: April 28, 2014

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

